

In re) Fair Hearing No. 9885
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a fifty-two-year-old woman with a high school education. Her work history is primarily as a retail and office clerk. In February, 1990, the petitioner suffered a sudden onset of cramping, diarrhea, and bloody stools. She was hospitalized for several days, undergoing tests and the removal of three polyps.

Upon discharge, however, her symptoms persisted. Testing in March, 1990, led to a diagnosis of Crohn's disease and the institution of a medication regimen. After that, her symptoms would still strike intermittently.

The petitioner represented that she attempted to return to work in May, 1990, but two and a half weeks later had to be hospitalized when her symptoms recurred. She has not worked since.

The record shows that the petitioner was again

hospitalized in January, 1991, for nearly three weeks with intense abdominal pain, nausea, and vomiting. Her symptoms gradually resolved on medication and special diet.

The petitioner is five feet tall and weighs over 200 pounds. The record indicates she has a history of "morbid obesity," as well as COPD and hypertension.

In December, 1990, the petitioner's family physician wrote the following note to the petitioner's attorney:

[Petitioner] does indeed now have a problem with her liver which may or may not be related to her Chron's [sic] disease. Her Chron's [sic] has also become more active again in the past month. I feel she will certainly be unable to work for conceivably the next 6 weeks. Now that she has indeed been disabled for the full year, can we arrange coverage for her retroactively?

In February, 1991, this physician followed up with the following report:

In response to your last inquiry, our greatest difficulty with [petitioner] at this point is that we have been unable to sufficiently control her Chron's [sic] disease to allow her to work. She was again in the hospital recently with a prolonged bout of diarrhea and I believe, an ileus despite being treated with Prednisone. Her disease has progressed from the point of being controlled by Azulfidine to being poorly controlled even with corticosteroids. Her greatest impediment to working is her uncontrolled diarrhea which occurs unpredictably and often without warning.

I have not personally seen [petitioner] since December 1990. [Doctor] is currently in charge of her care for the Chron's [sic] disease although I been informally in contact with him on her progress. I urge you to contact him for further information if needed.

Although the lack of an updated report from the treating physician mentioned in the above report can be considered problematic, it is found that a preponderance of evidence, including the uncontroverted reports (supra) from

the petitioner's family physician, establishes that since February, 1991, the petitioner has been unable to perform any work on a regular and sustained basis. It appears that there were periods of time within the last year that the petitioner's problems were considered "under control" with medication. However, it has now been shown that any job the petitioner may have been able to perform would have been temporary and subject to frequent interruptions and absenteeism.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, as found above, a preponderance of the medical evidence establishes that the petitioner has met the above standard. Absent any evidence contradicting the opinions of the petitioner's family physician, it must be

concluded that the petitioner has been disabled since February, 1990. The Department's decision is, therefore, reversed.

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